Marines dodging murder convictions

by Steve Liewer

CAMP PENDLETON, Calif. - One after another, eight Camp Pendleton servicemen have confirmed what happened April 26, 2006, in Hamdaniya, Iraq: They dragged a man from his bed, marched him to a shallow hole, gagged him, bound his hands and feet, and then executed him with a storm of bullets.

Despite being armed with those confessions, the prosecution has yet to win a murder conviction in the war-crimes case.

Five of the Hamdaniya defendants pleaded guilty to lesser charges as part of plea bargains. A court-martial jury acquitted a sixth defendant, Marine Cpl. Trent D. Thomas, of murder and didn't sentence him to prison on the charges for which he was found guilty.

On Wednesday, a military jury acquitted a seventh defendant of murder but found him guilty of larceny, housebreaking and conspiracy. It will deliberate on the sentence for Marine Cpl. Marshall L. Magincalda today (Aug. 2).

"This result was a blessing, there's no doubt about it," said Joseph Low, the lead attorney for Magincalda. "We got us a fair jury. That's all we wanted."

The last chance for prosecutors to secure a Hamdaniya murder conviction will likely come today in the court-martial of Marine Sgt. Lawrence G. Hutchins III.

Hutchins has been described as the instigator and ringleader of the abduction and shooting. His trial has run almost simultaneously with Magincalda's in a nearby courtroom at Camp Pendleton.

The jury in the Hutchins case deliberated all of Wednesday and is expected to render its verdict today. It, like the Thomas and Magincalda juries, is composed of Iraq war veterans.

During the court-martial for Magincalda, Low repeatedly sought empathy from jurors for his client. He appealed to the Marine Corps' legendary sense of fraternity while making his closing statement Tuesday.

"I think only a combat vet can understand a combat vet. That's an experience you have to go through. You

can't be told about it," Low said.

"I'm going to return him to you all," he added near the end of his closing statement. "I'm going to ask you to do right by him, to take care of him."

The defendants' battalion operated in an area of Iraq filled with insurgents.

"It does seem as though the panels are taking into account the stress of combat and the (young) age and maturity of Marines," said Tom Umberg, an Army Reserve colonel from Orange County who has been following the cases. Umberg has served as a military prosecutor and judge.

"I think the panel is also taking into consideration the climate set by the chain of command," he added. "If the chain has a diminished regard for the laws of war, (so will) a 19-year-old."

The Magincalda jury deliberated nearly 12 hours over two days.

Magincalda's stepsister gasped as the jury foreman announced the not-guilty verdict on the murder charge Wednesday afternoon. His military attorney, Lt. Col. Philip Simmons, patted him on the shoulder as he stood at attention and stared forward.

Had Magincalda been convicted of murder, he would automatically have been imprisoned for life without parole. He still faces a maximum penalty of life in prison.

Thursday morning, Magincalda's friends and family members will likely echo Low's earlier depiction of his client - that Magincalda is a devout Christian who reluctantly joined the Hamdaniya plot because he didn't want to contradict Hutchins in front of his squad.

Magincalda, the other six Marines and one Navy corpsman charged in the Hamdaniya case have presented themselves as religious or ethical individuals. They also have emphasized the importance of loyalty among Marines, including the need to follow a superior's orders.

The defendants have sought to explain their actions by highlighting a variety of factors:

- They were following legitimate orders from their commander.

- They were unduly influenced by several forms of combat stress, especially post-traumatic stress disorder.

- They were being pushed by their superiors to get tougher with insurgents.

- They had set out to get rid of a suspected insurgent so he wouldn't kill more U.S. troops.

According to testimony in the Hamdaniya court proceedings, Hutchins' squad was assigned to watch for insurgents planting roadside bombs in a particularly troublesome hamlet.

At Hutchins' suggestion, several of the unit's members said, the squad decided to kill an alleged insurgent it had repeatedly arrested but who was always released by Iraqi authorities.

When the servicemen couldn't grab the man they wanted, they snatched a neighbor and shot him. Then they arranged the scene to make it look as if the man had fired at the Marines when he had been caught digging a hole for a bomb.

At the time of the killing, Magincalda was nearing the end of his third combat tour in Iraq with Kilo Company, 3rd Battalion, 5th Marine Regiment. He had received a Purple Heart, and the battalion had earned a Presidential Unit Citation.

During Magincalda's court-martial, prosecutors alleged that he played an active role in carrying out the kidnapping and killing last year. Magincalda was the third highest-ranking member of his squad.

The prosecution relied heavily on the testimony of the five Hamdaniya defendants who had entered into plea bargains. Those servicemen received prison sentences of one to eight years in return for their cooperation against the remaining defendants.

The five testified in detail about Magincalda's part in the crime - that he helped refine the plot, joined two other Marines in grabbing the Iraqi man from his bed and marching him to the site of the shooting, then

worked to bind him. They also said Magincalda helped arrange bullet casings around the body to create the appearance of a firefight.

"This is one of the rare cases where we do know with absolute certainty what happened," Lt. Col. Sean Sullivan, the lead prosecutor, said in his closing statement Tuesday. "You're never going to see more evidence of a conspiracy to commit kidnapping and murder."

Staff writer Rick Rogers contributed to this report.

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